ORIGINAL

No. 94-9247

In The

Supreme Court of the United States

October Term, 1994

Supreme Court, U.S.
FILED
MAY 12 1995
OFFICE OF THE CLERK

Charles Carlisle,
Petitioner

v.

United States of America

Petition For Writ of Certiorari
To The United States Court of Appeals
for the Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

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22pp

QUESTION PRESENTED

Should a Motion for a Judgment of Acquittal brought under Federal Rule of Criminal Procedure 29(C), which is granted by the United States District Court, be overturned because it was filed eight (8) days after the jury's verdict?

LISTING OF ALL PARTIES

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No. _____

IN THE SUPREME COURT

OF THE

UNITED STATES OF AMERICA

October Term, 1994

Charles Carlisle, Petitioner

vs.

United States of America, Respondent

PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Petitioner, Charles Carlisle, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Sixth Circuit reversing the District Court's Opinion granting the Petitioner an Acquittal under Federal Rule of Criminal Procedure 29(C).

OPINIONS BELOW

The Opinion of The United States Court of Appeals for the Sixth Circuit, in the case of United State of America v Charles Carlisle, File No. 93-2470, reversing the District Court's opinion granting Defendant Charles Carlisle's Motion for a Judgment of Acquittal under Federal Rule of Criminal Procedure 29(C) appears in Appendix A to this Petition. The October 27, 1993 Opinion of the United States District Court for the Western District of Michigan, the Honorable Richard A. Enslen presiding, in the case of United States of America v Charles Carlisle, File No. 1:93:CR:66-02 granting Defendant Charles Carlisle's Motion for a Judgment of Acquittal pursuant to Federal Rule of Criminal Procedure 29(C) appears in Appendix B to this Petition.

JURISDICTION

On March 15, 1995 the United States Court of Appeals for the Sixth Circuit issued a Judgment ordering that the District Court's Judgment of Acquittal of Defendant Charles Carlisle be reversed. The case was remanded to the District Court to reinstate the jury's verdict and for sentencing. The United States Supreme Court has jurisdiction to review the Judgment entered by the United States Court of Appeals for the Sixth Circuit under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Federal Rule of Criminal Procedure 29(C) provides:

> **Motion after discharge of jury.** If the jury returns a verdict of guilty or is discharged without having returned a verdict, a motion for judgment of acquittal may be made or renewed within 7 days after the jury is discharged or within such further time as the court may fix during the 7-day period. If a verdict of guilty is returned the court may on such motion set aside the verdict and enter judgment of acquittal. If no verdict is returned the court may enter judgment of acquittal. It shall not be necessary to the making of such a motion that a similar motion has been made prior to the submission of the case to the jury.

STATEMENT OF THE CASE

The United States District Court of the Western District of Michigan had jurisdiction over this criminal case pursuant to 28 U.S.C. § 1331.

On April 12, 1993 Defendant Charles Carlisle was named in one count of a seven defendant criminal complaint charging conspiracy to possess marijuana with intent to distribute, in violation of 21 U.S.C. §§ 841 and 846. On July 13, 1993, a jury convicted Defendant Charles Carlisle of conspiracy to possess marijuana with intent to distribute, in violation of 21 U.S.C. §841 and §846. On July 23, 1993, Defendant Charles Carlisle, through his trial counsel, filed a Motion for a Judgment of Acquittal. On August 24, 1993, the United States District Court for the Western District of Michigan denied the Motion for a Judgment of Acquittal, finding that a rational trier of fact could find the Defendant guilty.

The District Court did not originally deny the Motion for a Judgment of Acquittal on the basis that the Motion was not timely filed. The District Court, in its written opinion, did not discuss the fact that the Motion was filed eight business days after the jury's verdict.

Sentencing was scheduled for October 14, 1993. On October 14, 1993, the District Court reversed its earlier opinion, and granted Defendant Charles Carlisle's Motion for a Judgment of Acquittal. The District Court subsequently signed an eight page written opinion. The District Court specifically found as follows:

> The facts of this case require the same result as those in Burgess and Pearce. The government produced no evidence that Charles Carlisle entered into an agreement with any member of the conspiracy. Like the Burgess defendant, he was clearly present during the conspiracy, and the jury certainly could have found that he knew about it. However, in the course of hours of tape recorded conversations, no conspirators suggest that Carlisle is involved in this conspiracy. There was no evidence that he was involved in arranging the transport of the marijuana to Michigan. In fact, Crawford testified that prior to coming to Michigan he had never heard of Carlisle. Carlisle never handled the drugs or the truck which contained them, and there was no evidence that Carlisle was to benefit from the conspiracy. I find that Carlisle's hearsay statement concerning scanners, and the fact that he drove a conspirator (his common law mother-in-law) to her home, and then drove two conspirators to a hotel and dropped them off, is insufficient to establish that he knowingly and voluntarily joined the conspiracy.
>
> Viewing the evidence in the light most favorable to the government, I find that the government's case against Charles Carlisle is insufficient to prove beyond a reasonable doubt that Carlisle knowingly and voluntarily joined the conspiracy. As a result, the defendant's motion will be granted. (Pages 4-5 of the District Court's October 28, 1993 Opinion.)

The United States of America filed an Appeal with the United States Court of Appeal for the Sixth Circuit. On February 21, 1995 the United States Court of Appeals for the Sixth Circuit issued a published Opinion, and reversed the Judgment of Acquittal because "under Rule 29, it is beyond the court's jurisdiction to grant an untimely motion for acquittal."

REASON FOR GRANTING THE WRIT

The United States Court of Appeals for the Sixth Circuit, in the case of United States of America v Charles Carlisle, has reached a decision that is in conflict with published decisions of other United States Courts of Appeals on this same matter. The following circuits have, in conflict with the opinion issued by the Sixth Circuit in United States of America v Charles Carlisle, ruled that a Defendant's Motion for a Judgement of Acquittal under Federal Rule of

Criminal Procedure 29(C) which is filed only one day late should be decided by the District Court.

A. United States v Coleman, 811 F.2d 804 (3rd Cir. 1986)

B United States v DiBernado, 880 F.2d 1216 (11th Cir. 1989)

C. Arizona v Manypenny, 672 F.2d 761 (9th Cir.) cert. denied, 459 U.S. 850, 103 S.Ct. 111, 74 L.Ed.2d 98 (1982)

D. United States v Mendonza, 565 F.2d 1285 (5th Cir. 1978)

E. United States v Giampa, 758 F.2d 928 (3rd Cir. 1985)

In this case the United States of America has argued that the Motion for a Judgment of Acquittal should have been filed by July 22, 1993. It was filed on July 23, 1993. Therefore, it is the United States of America's argument that the Motion was filed one day too late, and as a result, the Defendant has completely lost his right to file a Motion for a Judgment of Acquittal. The district court ruled as follows:

> Rule 29(c) allows defendant seven days after the jury is discharged, "or within such further time as the court may fix during the 7-day period," to bring a motion for judgment of acquittal. The government correctly points out that this deadline occurred on July 22 in this case, but the defendant's motion was filed on July 23. However, I can conceive of no prejudice to the United States which will result from consideration of a motion that is one day late in this case. Because I believe that refusal to hear this motion would result in grave injustice, and because the Rule permits the Court to extend the deadline, I will consider this motion as if it were filed in a timely manner. (Page 1 of the District Court's October 28, 1993 Opinion.)

There are two questions which the United States Supreme Court should address in deciding whether or not to strictly enforce Federal Rule of Criminal Procedure 29(a). First, what prejudice is there to the United States of America? On that issue, it certainly cannot be argued that there was any prejudice. The motion was only filed one day late.

The second question the United States Supreme Court should address is what is the purpose behind Federal Rule of Criminal Procedure 29(c)? The purpose behind the rule, as

identified in Unites States v Smith, 331 U.S. 469, 67 S.Ct. 1330, 91 L.Ed.2d 1610 (1947), is to avoid a trial judge deciding a motion after a considerable period of time has passed. After a considerable period of time has passed, the trial judge may not remember the particular facts of the trial. Therefore, when there is a considerable period of time (not eight days) there is a legitimate reason to not allow the district court to decide the case and grant a new trial.

The purpose behind Federal Rule of Criminal Procedure 29(c) would not be served by applying the rule to the facts of this case. The Motion for a Judgment of Acquittal was filed only one day late. The purpose for the rule would not be served by refusing to allow a District Court to decide a Motion for a Judgment of Acquittal that is filed one day late. The District Court has available to it less drastic sanctions to enforce Federal Rule to Criminal Procedure 29, as opposed to completely denying the Defendant his right to have his Motion for a Judgment of Acquittal decided. If the delay was due to defense counsel, the District Court has the authority to appropriately sanction defense counsel. But, the severe penalty and sanction of refusing the Defendant his right to have the Motion for a Judgment of Acquittal decided, should not be invoked where the motion is filed one day late.

Other circuits have recognized that a defendant should not be completely prejudiced where a Motion for a Judgment of Acquittal is filed only one day late. For example, in United States v Coleman, 811 F.2d 804, 807 (3rd Cir. 1986) the Third Circuit Court of Appeals held:

> However, the same result does not necessarily obtain for a motion of acquittal under Rule 29. In *United States v Giampa*, 758 F.2d 928, 936 n. 1 (3d Cir. 1985), this court specifically held that a district court may enter a judgment of acquittal "*sua sponte* under its inherent power," without regard to the seven-day requirement of Rule 29. *See also United States v. Wright-Barker*, 784 F.2d 161 (3d Cir. 1986) (reiterating *Giampa's* holding as to court's inherent power, but refusing to define limits of this power). This inherent power to enter a judgment of acquittal does not extend to judgments granting a new trial because such judgment, entered *sua sponte* by the court, might place the defendant twice in jeopardy. Even though the government may appeal an acquittal in some instances, the defendant will never face a new trial after such an appeal.

Here, although the district court entered a judgment of acquittal on Del Bono's motion for acquittal, and not *sua sponte*, it would be inconsistent to hold that the court's inherent power to grant an acquittal out of time *sua sponte* does not extend to those occasions when a motion is made and granted. Accordingly, Del Bono's acquittal cannot be reversed for such a procedural deficiency, and we must now consider the merits of the appeal.

In United States v DiBernardo, 880 F.2d 1216, 1225 (11th Cir. 1989) the Eleventh Circuit Court of Appeals held:

> The rules of criminal procedure, of course, do not demarcate the outer limits of a trial court's authority to vacate a judgment of conviction. Under its inherent supervisory power, a district court may consider an untimely post-trial motion for judgment of acquittal or may grant such a motion sua sponte to correct manifest error when it retains jurisdiction over the case. *See United States v. Coleman*, 811 F.2d 804, 806-07 (3d Cir.1987); *Arizona v Manypenny*, 672 F.2d 761, 764-65 (9th Cir.) *cert. denied*, 459 U.S. 850, 103 S.Ct. 111, 74 L.Ed.2d 98 (1982); *United States v Doherty*, 675 F. Supp. 726, 729 (D.Mass. 1987); *United States v. Broadus*, 664 F.Supp. 592, 595-98 (D.D.C. 1987). The rules must be applied flexibly "to provide for the just determination" of every case and must be construed "to secure simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay." Rule 2, Fed. R.Crim.P.; *see Fallen v United States*, 378 U.S. 139, 142, 84 S.Ct. 1689, 1691, 12 L.Ed.2d 760 (1964); *United States v Mendonza*, 565 F.2d 1285, 1288-90 (5th Cir.1978). Thus if a district court has jurisdiction over a case, then the interests of justice demand that it review the sufficiency of the evidence for conviction, without regard to the technicalities of pleadings. *See Ansley v. United States*, 135 F.2d 207, 208 (5th Cir. 1943).

The rules should be applied flexibly. The Motion for a Judgment of Acquittal was filed only one day late. The district court correctly ruled it had the right to consider the Motion.

CONCLUSION

For the reasons set forth above, a Writ of Certiorari should issue to review the Judgment and Opinion of the Sixth Circuit Court of Appeals in this matter.

BLAKESLEE, CHAMBERS, PETERSON, DALRYMPLE & CHRISTOPHERSON, P.C.

Dated: May 9, 1995

By: _____
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ORIGINAL

No. 94-9247

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1994

Charles Carlisle,
Petitioner

v.

United States of America

PROOF OF MAILING

James A. Christopherson
Counsel for Petitioner Charles Carlisle
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James A. Christopherson, being first duly sworn, deposes and says that on the 8th day of May, 1995, he did in fact mail three (3) copies of the **Petition for Writ of Certiorari** in the above-entitled matter, by then and there placing said document in an envelope clearly addressed to James R. Redford, Esq., attorney for United States of America, 399 Federal Building, 110 Michigan Avenue, N.W., Grand Rapids, MI 49503, telephone number (616) 456-2404 and three (3) copies of the **Petition for Writ of Certiorari** in the above-entitled matter, by then and there placing said document in an envelope clearly addressed to Solicitor, General Department of Justice, Washington D.C. 20540, and placing same in the U.S. Mail at Traverse City, Michigan, with postage fully prepaid for First Class Mail. All parties required to be served have been served.

James A. Christopherson

Subscribed and sworn to before

me this 9th day of May, 1995.

Karen A. Mayo, Notary Public
Grand Traverse County, Michigan
My commission expires: 12/19/98

Appendix A

Filed
93 Oct 28 AM 9:15
Clerk, U.S. District Court
Western District of Michigan

United States District Court

For the Western District of Michigan

UNITED STATES OF AMERICA,
Plaintiff,

v

File No. 1:93:CR:66-02
HON. RICHARD A. ENSLEN

CHARLES CARLISLE,
Defendant.

OPINION

In accordance with the oral opinion delivered from the bench on October 14, 1993, and for the reasons given therein, this Court's Opinion and Order of August 19, 1993, is withdrawn. In its place, the Court enters the following Opinion and Judgment:

The matter before the Court is defendant Carlisle's motion for a judgment of acquittal pursuant to Fed. R. Crim. P. 29(c). Defendant was charged in a single count Indictment with conspiracy to possess marijuana with intent to distribute. On July 13, 1993, a jury found defendant guilty.[1] Defendant's motion does not claim that there was not an agreement to possess

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[1] Rule 29(c) allows defendants seven days after the jury is discharged, "or within such further time as the court may fix during the 7-day period," to bring a motion for judgment of acquittal. The government correctly points out that this deadline occurred on July 22 in this case, but defendant's motion was filed on July 23. However, I can conceive of no prejudice to the United States which will result from consideration of a motion that is one day late in this case. Because I believe that refusal to hear this motion would result in grave injustice, and because the Rule permits the Court to extend the deadline, I will consider this motion as if it were filed in a timely manner.

and distribute marijuana. Instead, his motion argues that the evidence was insufficient to prove that he joined the conspiracy.

The standard of review for claims of insufficient evidence is "whether after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." Jackson v. Virginia, 443 U.S. 307, 319 (1979) (emphasis in original); United States v. Boling, 869 F.2d 965 (6th Cir. 1989). Reviewing the evidence in the light most favorable to the government means that I must make all credibility choices and inferences in a manner that supports the jury's verdict. Further, circumstantial evidence alone is sufficient to sustain a conviction and such evidence need not remove every reasonable hypothesis except that of guilt. United States v. Stone, 748 F.2d 361, 363 (6th Cir. 1984).

The evidence presented against Carlisle at trial was as follows. On the evening of April 10, 1993, defendant Rupert, Carlisle's common-law wife, defendant Ramon, Ms. Rupert's mother, and Thomas Crawford arrived at the residence on Yale Street that Carlisle and Rupert shared. Ramon travelled in a car driven by Rupert, and they were followed by a truck full of marijuana. That truck was driven by Crawford, the government's primary witness, who was wearing a tape-recording device at the time.

In his opening statement, defendant's counsel stated that Rupert told Carlisle that the truck contained marijuana, and that she was scared. The inference that Carlisle knew that the truck contained marijuana could also be drawn from a hearsay statement by Rupert I admitted. As soon as Ramon, Rupert and Crawford arrived at the Yale Street residence, Crawford recorded the following statement of Rupert: "Okay, just pull out and Chuck [Carlisle] says to go down the street and just park for awhile because he said he's heard over the scanner, there's some cops around here."[2], Cassette #1A, p. 5. Crawford parked the truck down the street.

When Crawford returned from parking the truck, he was introduced to Carlisle. Crawford testified that Carlisle was quiet and did not appear nervous. At this point, the parties appear to be discussing where to park the truck for the evening, and the following conversation ensued:

Ramon: We can park it behind the house.

Crawford: All right might good.

---

[2] This hearsay statement was the only evidence that there was a scanner in the Carlisle/Rupert home. A neighbor testified that she had been in the home on a daily basis during the time period in question, and never saw a scanner. Further, Agent Munson testified that he had been in the house and the back bedrooms, and never saw a scanner.

Amelia Ramon made reference to her grandson picking up signals on scanners. That person does not reside in the Carlisle/Rupert residence.

Carlisle: Figure right down the drive.

Ramon: Yeah, because my son called, my grandson called and said there was cops around here.

Rupert: around this area

Ramon: unintelligible

Rupert: and we don't want to take a chance right now

Carlisle: We don't want to take no chances.

Crawford: No, uh uh, that's why I was going, I, the speed limit was thirty and so I stayed right on it.

Ramon: Yeah? Oh and before I forget, on the key, the combination. I took the thing off and I put it on there so ...

Carlisle: Okay...is that for the back?

*** (one page later) ***

Ramon: We're going (unintelligible)

Crawford: Oh yeah it's best not take any...

Carlisle: No I won't take no chances...

Crawford: Okay.

Id. at 5-7.

At Rupert's request, Carlisle then drove Amelia Ramon to her home shortly after Rupert, Ramon and Crawford arrived at the Yale Street residence. The truck full of marijuana, driven by Crawford, followed. The truck was left at Ramon's home, and Crawford joined Carlisle and Ramon in the car. Carlisle then drove Crawford and Ramon to the Stouffer Hotel. During this trip, tape recordings indicated that there was nothing but casual banter about topics such as cars and the city of Battle Creek. Carlisle dropped them off and left. There was no evidence that Carlisle had any further contact with any member of the conspiracy.

Upon review of the evidence in this case under the foregoing standards, I find that it is not sufficient to sustain defendant's conviction. Viewed in the light most favorable to the

government, I believe that a rational trier of fact could find beyond a reasonable doubt that Carlisle knew about the conspiracy. However, I do not believe that a rational trier of fact could find beyond a reasonable doubt, as the jury was instructed in Instruction 10B it must, that Carlisle knowingly and voluntarily joined the conspiracy. Instruction 10C explained that in order to establish knowing and voluntary joinder,

> the government must prove that [the defendant] knew the conspiracy's main purpose, and that he voluntarily joined it intending to help advance or achieve his goals. . . . But proof that a defendant simply knew about a conspiracy, or was present at the time, or associated with members of the group, is not enough, even if he approved of what was happening or did not object to it. Similarly, just because a defendant may have done something that happened to help a conspiracy does not necessarily make him a conspirator. These are all things that you may consider in deciding whether the government has proved that a defendant joined a conspiracy. **But without more they are not enough.**

Sixth Circuit Pattern Criminal Instruction No. 3.03 (1991) (emphasis added). The Committee Notes cite many cases in support of this instruction. E.g., United States v. Richardson, 596 F.2d 157, 162 (6th Cir. 1979) (there must be proof of an intention an agreement to cooperate in the crime); United States v. Bostic, 480 F.2d 965, 968 (6th Cir. 1973) (there must be intentional participation in the transaction with a view to the furtherance of the common design and purpose).

In the unpublished decision of United States v. Burgess, 1992 U.S. App. LEXIS 34740 (6th Cir.), the court acknowledged that "[c]onspiracy cases often present difficult questions about the extent to which seemingly passive participants are nonetheless culpable members of the conspiracy." Id. at *21. The appellate panel went on to hold that there was insufficient evidence to support defendant Burgess' conviction for conspiracy to possess marijuana with intent to distribute. In Burgess, a defendant named Muncy planned to buy marijuana from DEA agent and informant. Muncy drove to the scheduled rendezvous point with Burgess and a third defendant, Rose. When they arrived, Muncy walked to the agents' car and discussed the purchase. Muncy then went back to his own car and brought Rose to the agents' car with him. After the transaction began, all three were arrested. A search of the car revealed a loaded revolver and $15,000 in cash in the front seat, and scales in the trunk.

Upon review of these facts, the Sixth Circuit concluded that the jury could have inferred Burgess' knowledge of the purpose of the trip, White's possession of money to purchase marijuana, and even the presence of a weapon in the car. However, because Burgess did not participate in the discussions with the agents, he was not mentioned in those conversations, he did not drive the car, and he never left the middle of the front seat, the court held that a rational trier of fact could not find that Burgess knowingly and voluntarily joined the conspiracy.

United States v. Pearce, 912 F.2d 159 (6th Cir. 1990), cert. denied sub nom Thorpe v. United States, 111 S.Ct. 978 (1991), provides another example of evidence which the Sixth Circuit found to be sufficient to sustain a conspiracy conviction. Defendants Thorpe and Pearce were convicted of conspiring to possess and distribute crack in violation of 21 U.S.C. § 846 on the following evidence. A SWAT team entered what they suspected was a crack house after an informant purchased crack at the house with registered bills. When they entered, Thorpe ran into the basement yelling "it's a bust." The SWAT team found Thorpe nearby two doses of crack and a loaded revolver. Thorpe had a live round in his pocket that matched those found in the gun. The police found Pearce sitting on a couch in the living room. Next to him was a bag of crack and the registered bills the informant used in his purchase.

The Sixth Circuit reversed both conspiracy convictions. It found that the record was devoid of any evidence that Thorpe and Pearce had entered into an agreement. Although the defendants' presence at the house was unexplained, the court concluded that the no rational trier of fact could have found that even tacit coordination between Thorpe, Pearce, or any third party, to maintain a crack house or to distribute crack.

The facts of this case require the same result as those in Burgess and Pearce. The government produced no evidence that Charles Carlisle entered into an agreement with any member of the conspiracy. Like the Burgess defendant, he was clearly present during the conspiracy, and the jury could have found that he knew about it. However, in the course of hours of tape recorded conversations, no conspirators suggest that Carlisle is involved in the conspiracy. There was no evidence that he was involved in arranging the transport of the marijuana to Michigan. In fact, Crawford testified that prior to coming to Michigan, he had not heard of Carlisle. Carlisle never handled the drugs or the truck which contained them, and there was no evidence that Carlisle was to benefit from the conspiracy. I find that Carlisle's hearsay statement concerning the scanners, and the fact that he drove a conspirator (his common law mother-in-law) to her home, and then drove two conspirators to a hotel and dropped them off, is insufficient to establish that he knowingly and voluntarily joined the conspiracy.

Viewing the evidence in the light most favorable to the government, I find that the government's case against Charles Carlisle is insufficient to prove beyond a reasonable doubt that Carlisle knowingly and voluntarily joined the conspiracy. As a result, defendant's motion will be granted.

Dated in Kalamazoo, MI:
October 27, 1993

"s/Richard A. Enslen"
RICHARD A. ENSLEN
United States District Judge

RECOMMENDED FOR PARTIAL-TEXT PUBLICATION
Pursuant to Sixth Circuit Rule 24

ELECTRONIC CITATION: 1995 FED App. 0063P (6th Cir.)
File Name: 95a0063p.06

Nos. 93-2373/2380/2470; 94-1105

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

DELORES RUPERT (93-2373);
MICHAEL HALL (93-2380); and
AMELIA RAMON (94-1105),
Defendants-Appellants.

ON APPEAL from the United States District Court for the Western District of Michigan

UNITED STATES OF AMERICA,
Plaintiff-Appellant,

v.

CHARLES CARLISLE (93-2470),
Defendant-Appellee.

Decided and Filed February 21, 1995

Before: BROWN, RYAN, and BOGGS, Circuit Judges.

BOGGS, Circuit Judge. Rupert, Ramon, and Hall appeal their convictions for conspiracy to possess marijuana with the intent to distribute, in violation of 21 U.S.C. §§ 841 and 846. The government appeals the court's granting of Carlisle's motion for acquittal. We affirm the convictions of Rupert, Ramon, and Hall, and reverse Carlisle's acquittal. Our discussion of the issues presented by Rupert, Ramon, and Hall is contained in an unpublished appendix to this decision.

I

The government argues on appeal that the district court lacked jurisdiction to acquit Carlisle.

On July 13, the jury convicted Carlisle, along with the other defendants before us, of one count of conspiracy to possess marijuana with intent to distribute. On July 23, Carlisle filed a motion for judgment of acquittal. The seven-day period in which Carlisle could move for acquittal under Fed. R. Crim. P. 29 does not include weekends, so it lapsed on July 22. The district court denied Carlisle's motion on August 24, 1994.

When Carlisle appeared for sentencing on October 14, however, the court on its own motion reversed its earlier decision and granted Carlisle's motion for acquittal.[1] The

[1]The court noted in footnote 1 of its Opinion:

> The government correctly points out that . . . defendant's motion was filed on July 23. However, I can conceive of no prejudice to the United States which will result from consideration of a motion that is one day late in this case. Because I believe that refusal to hear this motion would result in grave injustice, and because the Rule [29] permits the court to extend the deadline, I will consider this motion as if it were filed in a timely manner.

court wrote: "I do not believe that a rational trier of fact could find beyond a reasonable doubt, as the jury was instructed in Instruction 10B it must, that Carlisle knowingly and voluntarily joined the conspiracy." The district court held that the evidence was insufficient to convict under *Jackson v. Virginia*. Following the Sixth Circuit's decision in *United States v. Burgess*, 931 F.2d 893 (6th Cir. 1991) (Table), 1991 WL 66056, and *United States v. Pearce*, 912 F.2d 159 (6th Cir. 1990), *cert. denied*, 111 S. Ct. 978 (1991), the district court found that the government failed to prove that Carlisle entered into an agreement.

Under Rule 29, it is beyond the court's jurisdiction to grant an untimely motion for acquittal. Furthermore, it is beyond a court's jurisdiction to enter a judgment of acquittal *sua sponte* after the case has been submitted to the jury. Fed. R. Crim. P. 29; *United States v. Davis*, 992 F.2d 635, 640 (6th Cir.), *cert. denied*, 114 S. Ct. 265 (1993); *see also United States v. Dennard*, 7 F.3d 235 (6th Cir. 1993)(Table), 1993 WL 351742.

In *Davis*, as here, the district court initially denied defendant's motion for acquittal. At sentencing, however, the court, as here, reversed its previous decision, asserting that it had the inherent authority to consider a judgment of acquittal after the discharge of the jury "if necessary to correct manifest injustice." *Id.* at 637. On appeal, we ruled that a district court does not have such inherent authority. *Id.* at 638. We noted that there is no provision in Rule 29 that allows a court to act on its own initiative after the case is submitted to the jury. *Id.* at 639. However, under Rule 29(c), if Carlisle had moved for acquittal within seven days of the discharge of the jury (or later, if the court so allowed during that seven-day period), it would have been within the court's jurisdiction to grant Carlisle's motion for acquittal.

The district court lacked the jurisdiction to acquit Carlisle. We therefore must reverse the judgment of acquittal.

II

In conclusion, we affirm the convictions of Ramon, Rupert, and Hall. However, we reverse Carlisle's judgment of acquittal and remand for the district court to reinstate the jury's verdict and for sentencing.